

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NYCOMED GmbH and WYETH,

Plaintiffs,

v.

APOTEX INC. and APOTEX CORP.,

Defendants.

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) Civil Action No. 1:08-00827 (RAG)
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) Judge Ronald A. Guzman
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) Magistrate Judge Nan R. Nolan
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**JOINT MOTION TO
WITHDRAW DEFENDANTS' JURY DEMAND WITHOUT PREJUDICE**

NOW COMES Plaintiffs Nycomed GmbH and Wyeth and Defendants Apotex, Inc. and Apotex Corp. ("Parties"), by and through their attorneys, and hereby move this Court to withdraw Defendants' jury demand without prejudice. In support thereof, the Parties state as follows:

1. Apotex Inc. has submitted an Abbreviated New Drug Application ("ANDA") to the FDA seeking approval for pantoprazole sodium injection prior to expiration of United States Patent No. 6,780,881 ("the '881 patent").
2. In response to the submission of Apotex Inc.'s ANDA, Plaintiffs filed suit against Apotex Inc. and Apotex Corp. (collectively, "Apotex") alleging infringement of the '881 patent under 35 U.S.C. § 271(e)(2)(A).
3. Apotex has filed an Answer, Affirmative Defenses and Counterclaims, and have sought a trial by jury for all matters for which it is entitled to a trial by jury.

4. Plaintiffs stipulate that they are not currently seeking an award for monetary damages against Apotex in this action.

5. WHEREAS, based on Plaintiffs' stipulation that they are not presently seeking an award for monetary damages in this action, Apotex will agree to voluntarily withdraw its demand for a trial by jury without prejudice if this Court will give it leave to reinstate its demand for trial by jury should circumstances change and Plaintiffs request an award of monetary damages in this action from Apotex.

WHEREFORE, the parties jointly and respectfully request that the jury demand be withdrawn without prejudice, and Apotex be granted the right to renew the jury demand if Plaintiffs seek monetary damages from Apotex in this action.

Dated: May 30, 2008

/s/ James B. Coughlan

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CERTIFICATE OF SERVICE

I, James B. Coughlan, an attorney, hereby certify that on this 30th day of May, 2008, a true and correct copy of the foregoing **Joint Motion to Withdraw Defendants' Jury Demand Without Prejudice** was filed with the Court's Electronic Case Filing (ECF) system and served via that system to the counsel for Defendants:

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